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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

PERSONALWEB TECHNOLOGIES, LLC and
LEVEL 3 COMMUNICATIONS, LLC,

Plaintiffs,

v.

EMC CORPORATION and VMWARE, INC.,

Defendants.

CASE NO.: 5:13-cv-01358-EJD

**[PROPOSED] ORDER
ENTERING SUMMARY JUDGMENT**

Docket No. 65

Hon. Edward J. Davila

1 Defendants EMC Corporation and VMware, Inc. (collectively, “Defendants”) move for
2 summary judgment regarding the asserted claims of U.S. Patent No. 5,978,791 (“the ’791 patent”),
3 Patent No. 6,415,280 (“the ’280 patent”), Patent No. 7,945,544 (“the ’544 patent”), Patent No.
4 7,945,539 (“the ’539 patent”), Patent No. 7,949,662 (“the ’662 patent”), and Patent No. 8,001,096
5 (“the ’096 patent”). Dkt. No. 65. Defendants contend that summary judgment is appropriate
6 because all asserted claims of these patents have now been invalidated through *inter partes* review
7 proceedings before the Patent Trial and Appeal Board (“PTAB”), and those invalidations are subject
8 to no further appeals. Plaintiffs PersonalWeb Technologies, LLC and Level 3 Communications,
9 LLC (collectively, “Plaintiffs”) do not oppose the motion. *Id.*

10 Summary judgment is proper where the pleadings, discovery and affidavits show that there
11 is “no genuine dispute as to any material fact and [that] the movant is entitled to judgment as a
12 matter of law.” Fed.R.Civ.P. 56(a). A district court may not grant a motion for summary judgment
13 solely because the opposing party has failed to file an opposition. *Cristobal v. Siegel*, 26 F.3d 1488,
14 1494-95, n.4 (9th Cir. 1994) (unopposed motion may be granted only after court determines that
15 there are no material issues of fact). The Court may, however, grant an unopposed motion for
16 summary judgment if the movant’s papers are sufficient to support the motion and do not on their
17 face reveal a genuine issue of material fact. *See United States v. Real Property at Incline Village*, 47
18 F.3d 1511, 1520 (9th Cir. 1995) (local rule cannot mandate automatic entry of judgment for moving
19 party without consideration of whether motion and supporting papers satisfy Fed.R.Civ.P. 56), *rev’d*
20 on other grounds sub nom. *Degen v. United States*, 517 U.S. 820 (1996).

21 The evidence presented by Defendants supports their motion for summary judgment. *See*
22 Decl. of Marissa A Lalli Exs. C-G (PTAB’s Final Written Decisions), H (Judgments of the United
23 States Court of Appeals for the Federal Circuit in *PersonalWeb Technologies, LLC v. EMC*
24 *Corporation and VMware, Inc.*, Nos. 2014-1602, 2014-1603, 2014-1604, 2014-1605, 2014-1606,
25 2014-1607, dated August 10, 2015), I-N (Inter Partes Review Certificates for the ’791 patent, ’280
26 patent, ’544 patent, ’539 patent, ’662 patent, and ’096 patent).

27 Accordingly, Defendants’ motion for summary judgment is GRANTED on Count 1 and
28 Count 2 of the Amended Complaint with respect to U.S. Patent No. 5,978,791, U.S. Patent No.

1 6,415,280, U.S. Patent No. 7,945,544, U.S. Patent No. 7,945,539, U.S. Patent No. 7,949,662, and
2 U.S. Patent No. 8,001,096.

3 IT IS SO ORDERED.

4 Dated: September 10, 2019

A handwritten signature in black ink, appearing to read 'Edward J. Davila', written over a horizontal line.

EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE